

WEST CHICAGO INTERGOVERNMENTAL FORUM
May 13, 2011
Meeting Minutes

ATTENDEES

Barbara Magel, Counsel for Local Communities
John Wills, WBK Associates, Local Communities
Don Feld, Thorium Action Group
Mark Krippel, Weston
John Coakley, City of Warrenville
Jesse DeMartini, DuPage County Forest Preserve District
Tony Charlton, DuPage County
Kelly Grahm, IEMA
Gerald Karr, Illinois Attorney General's Office
Mary Fleming, DuPage County State's Attorney's Office
Tim Fischer, U.S. EPA, Superfund
David Seely, U.S. EPA, Superfund

GENERAL TOPICS

The meeting began with an update on the EPA/Tronox vs. Kerr-McGee/Anadarko litigation. Mary Fulghum was unable to attend the meeting, but she provided an email update to Tim Fischer, which he read to the Forum. The email said:

On May 11, 2011, US Bankruptcy Judge Allan Gropper for the Southern District of New York in Manhattan decided Anadarko's motion to dismiss the amended complaint related to the counts other than the core fraudulent conveyance counts that Judge Gropper previously had allowed. Judge Gropper denied Anadarko's motion to dismiss the count of breach of fiduciary duty against New Kerr-McGee, so that count also survives. Judge Gropper granted Anadarko's motion to dismiss the counts against Anadarko of aiding and abetting New Kerr-McGee's breach of fiduciary duty and civil conspiracy against Tronox. The upshot is the core fraudulent conveyance claims and Tronox's breach of fiduciary duty claim against New Kerr-McGee will go forward.

Also, Anadarko and the Anadarko Litigation Trust (that the United States, States and Local Communities are the primary beneficiaries of under the Tronox bankruptcy settlement) jointly proposed a fourth case management order. If there are no objections by May 13, it is likely Judge Gropper will adopt the proposed order.

The parties proposed the following key dates:

- *Close of Fact Discovery including depositions: change from June 7 to June 24, 2011 - (there are no depositions scheduled for West Chicago sites)*
- *Expert Reports Due Date Proposed for August 31, 2011*

- Trial Date proposed for April 2, 2012

Finally, Rob Yalen, Assistant U.S. Attorney for the Southern District of New York and lead attorney for the United States in the Tronox bankruptcy and Anadarko litigation, was named Environmental Chief for the Southern District of New York.

KRESS CREEK/WEST BRANCH DUPAGE RIVER SITE

Tim began by describing the meeting that took place on May 10, 2011, at the EPA offices between EPA, Weston, and IEMA to discuss the 2011 West Chicago Environmental Response Trust budget. Tim said that the parties had negotiated a compromise resolution of disagreements over site costs and Trustee compensation that would allow the projects to go forward in 2011. Tim expressed his thanks to Weston and IEMA in working with EPA to resolve this issue for 2011 so that we would not risk losing a construction season for the Kress Creek project. Tim added that since the 2011 budget was now approved, work could begin in Reach 8 in June.

Tim said while the negotiations were taking place, all of the Targeted Material excavated from Reach 7 that had been staged at the REF until funding was available had been shipped out of the REF to Energy Solutions in Utah. He said that the final tally was 471 railcars of Targeted Material shipped for Reach 7.

Tim said that EPA held a public meeting on April 26 to present design plans for Reach 8 to interested stakeholders. The meeting was held at the Warrenville City Hall. Tim said that about 40 people came and asked questions, and he thought it was a very productive meeting. He said that the Reach 8 design was received from Arcadis by EPA and the local communities on April 1. He said that EPA, IEMA and the local communities had all submitted comments on the Reach 8 design and EPA was awaiting a revised design in the next two to three weeks for approval. Tim said field work was still planned to start on June 6, 2011.

Tim said that restoration activities had been initiated in the Reach 7 and Mack Road staging areas. He said that grading had been completed and that trees and shrubs were being planted at both locations.

Finally, Tim said that Rick Karl, Superfund Division Director, was planning to visit the Kress Creek site worksite again this summer. Tim said that Rick was targeting June 21 as a possibility for a visit, and Tim would keep everyone informed in case they would like to join the tour.

Gerry Karr asked if the design EPA was reviewing was for Reach 8A only, or for all of Reach 8. Tim said that the design covers all of Reach 8 and EPA would approve the entire design, but there is an understanding among the project team that there may be changes made to the Reach 8B design when the time comes, specifically with respect to how wet materials are handled and avoiding excess shipping costs.

Mark Krippel added that there was a concern with DOE reimbursement funds beyond 2011. In fact, 2012 does not look good for obtaining sufficient funding to complete Reach 8B. Mark just wanted to let everyone know that there was the potential that the Kress Creek project could be stretched out if the DOE funding does not come through in the required amounts when we need it. John Wills asked how much we were anticipating getting from DOE in 2012. Mark said that the anticipated claim was \$14.1 million based on the work completed in Reach 7 in 2010.

Barbara Magel asked if we needed to get on the list of sites needing Superfund money again. Tim said that, since he had already presented the site to the Risk-Based Prioritization Panel, Kress Creek was on the list of sites needing funding already. Tim said that we would need to highlight our shortage of funds again, however, and let the panel know we need funding in 2012.

RESIDENTIAL AREAS SITE

David recently approved the 2011 budget for the Residential Areas Site so that the known work that needs to be completed this year can begin. David said that the budget will also allow for checking on restoration on properties that were excavated last year. He said that he had not approved any budget for further excavation, but that he could if additional properties are discovered where remediation is required. In fact, Weston has already included an estimate for ten additional properties that David can approve now that the Trustee compensation issues have been worked out for 2011. David said that some restoration work has already begun, including some additional topsoil being added to properties where excavation was conducted previously.

David said that he still has 55 properties to review for potential follow-up. He knows of one property already that will require some sampling. David said that he would not start sampling efforts until he has a chance to determine whether additional properties will need sampling. He said that he should have some additional time to focus on records reviews not that he had cleared some urgent issues on his other sites.

Barbara Magel asked how long David thought it would take to complete his review of the final 55 properties. David said that it would take until the end of June if he were allowed to focus on the reviews exclusively until then. He was concerned that issues could arise on some of his other sites that could delay that slightly, however. Barbara asked if all field work could be completed this year if the records reviews were completed by the end of June. David said that he thought field work could be completed by sometime in September.

John Wills asked if the 55 properties represents all of the properties remaining that would need to be evaluated, or if there were potentially more. David said that the 55 is the last of the properties requiring review. John asked what could potentially trigger more properties that would need to be evaluated in the future. David said only additional information that EPA does not currently have could trigger something in the future. David said that the only obvious situation he could think of right now that could lead to

additional properties requiring action would be if contamination were “chased” on to a property that was not currently under review. David also mentioned that IEMA conducts surveys for residents who ask for them from time to time. He said that those surveys could turn up something that would need additional investigation.

Finally, David said that there are still three “no access” properties that need to be addressed.

Jessie DeMartini asked how long homeowners could continue to call EPA to have their property surveyed or sampled. She asked if this could theoretically go on forever, or would EPA stop responding to such requests at some point? Tim said he thought the point where EPA would consider the site to be complete and require no further investigation would be when the site is delisted from the NPL. At that point EPA would say that the sites were cleaned up and closed out and homeowners would potentially have to have surveys or sampling conducted on their own.

OTHER ISSUES

Update on NOAA Grant Projects

John Wills said that an IDNR floodway construction permit had been obtained for the Warrenville Dam removal project. John said that the next major item would be for the Illinois EPA to publish a public notice for a 401 Water Quality Certification. He said that he was working with Illinois EPA to resolve the last of their concerns.

John also said that there was a DuPage County watershed plan that identified several mitigation projects within the area of Reach 8 construction. He said that contractors working for the County had already been out conducting some survey work in the Reach. He said that he would be working to coordinate what we need to accomplish under the CERCLA cleanup with what the County would like to see in the watershed plan.

NEXT FORUM MEETING

The next meeting of the West Chicago Intergovernmental Forum is scheduled for **Friday, July 29, 2011, at 10 a.m.** in West Chicago City Council Chambers, West Chicago.